

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROBERT JOWITT, ) Case No. EDCV 15-0390-JPR  
                    )  
                    Plaintiff, )  
                    )     **MEMORANDUM OPINION AND ORDER**  
                    v.       )     **AFFIRMING COMMISSIONER**  
                    )  
CAROLYN W. COLVIN, Acting )  
Commissioner of Social   )  
Security,                )  
                    )  
                    Defendant. )  
\_\_\_\_\_ )

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his applications for Social Security disability insurance benefits ("DIB") and supplemental security income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). The matter is before the Court on the parties' Joint Stipulation, filed January 14, 2016, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed.

1       **II. BACKGROUND**

2           Plaintiff was born in 1968. (Administrative Record ("AR")  
3 139.) He completed about four years of college and worked as an  
4 automotive oiler and salvage laborer. (AR 36, 64-65, 70-71,  
5 165.)

6           On June 16, 2011, Plaintiff applied for DIB and SSI,  
7 alleging that he had been unable to work since October 2, 2009,  
8 because of a "[b]ack injury." (AR 139, 146, 164.) After his  
9 applications were denied initially and on reconsideration, he  
10 requested a hearing before an Administrative Law Judge. (AR 99.)  
11 A hearing was held on September 21, 2012, at which Plaintiff, who  
12 was represented by counsel, testified, as did a vocational  
13 expert. (AR 57-77.) In a written decision issued October 24,  
14 2012, the ALJ found Plaintiff not disabled. (AR 28-36.) On  
15 January 7, 2015, the Appeals Council denied Plaintiff's request  
16 for review. (AR 1.) This action followed.

17       **III. STANDARD OF REVIEW**

18           Under 42 U.S.C. § 405(g), a district court may review the  
19 Commissioner's decision to deny benefits. The ALJ's findings and  
20 decision should be upheld if they are free of legal error and  
21 supported by substantial evidence based on the record as a whole.  
22 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra  
23 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial  
24 evidence means such evidence as a reasonable person might accept  
25 as adequate to support a conclusion. Richardson, 402 U.S. at  
26 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).  
27 It is more than a scintilla but less than a preponderance.  
28 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.

1     Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
2 substantial evidence supports a finding, the reviewing court  
3 "must review the administrative record as a whole, weighing both  
4 the evidence that supports and the evidence that detracts from  
5 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,  
6 720 (9th Cir. 1996). "If the evidence can reasonably support  
7 either affirming or reversing," the reviewing court "may not  
8 substitute its judgment" for the Commissioner's. Id. at 720-21.

9     **IV. THE EVALUATION OF DISABILITY**

10     People are "disabled" for purposes of receiving Social  
11 Security benefits if they are unable to engage in any substantial  
12 gainful activity owing to a physical or mental impairment that is  
13 expected to result in death or has lasted, or is expected to  
14 last, for a continuous period of at least 12 months. 42 U.S.C.  
15 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.  
16 1992).

17     A. The Five-Step Evaluation Process

18     The ALJ follows a five-step sequential evaluation process to  
19 assess whether a claimant is disabled. 20 C.F.R.  
20 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,  
21 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first  
22 step, the Commissioner must determine whether the claimant is  
23 currently engaged in substantial gainful activity; if so, the  
24 claimant is not disabled and the claim must be denied.  
25 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

26     If the claimant is not engaged in substantial gainful  
27 activity, the second step requires the Commissioner to determine  
28 whether the claimant has a "severe" impairment or combination of

1 impairments significantly limiting his ability to do basic work  
 2 activities; if not, the claimant is not disabled and the claim  
 3 must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

4 If the claimant has a "severe" impairment or combination of  
 5 impairments, the third step requires the Commissioner to  
 6 determine whether the impairment or combination of impairments  
 7 meets or equals an impairment in the Listing of Impairments  
 8 ("Listing") set forth at 20 C.F.R. part 404, subpart P, appendix  
 9 1; if so, disability is conclusively presumed.

10 §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

11 If the claimant's impairment or combination of impairments  
 12 does not meet or equal an impairment in the Listing, the fourth  
 13 step requires the Commissioner to determine whether the claimant  
 14 has sufficient residual functional capacity ("RFC")<sup>1</sup> to perform  
 15 his past work; if so, he is not disabled and the claim must be  
 16 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant  
 17 has the burden of proving he is unable to perform past relevant  
 18 work. Drouin, 966 F.2d at 1257. If the claimant meets that  
 19 burden, a *prima facie* case of disability is established. Id.

20 If that happens or if the claimant has no past relevant  
 21 work, the Commissioner then bears the burden of establishing that  
 22 the claimant is not disabled because he can perform other  
 23 substantial gainful work available in the national economy.

24 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); Drouin, 966 F.2d at 1257.  
 25 That determination comprises the fifth and final step in the

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27 <sup>1</sup> RFC is what a claimant can do despite existing exertional  
 28 and nonexertional limitations. §§ 404.1545, 416.945; see Cooper  
v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

sequential analysis. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

**B. The ALJ's Application of the Five-Step Process**

At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since October 6, 2009, the alleged onset date. (AR 30.) At step two, he concluded that Plaintiff had the severe impairments of discogenic low-back pain at L4-L5 and L5-S1 with degenerative changes, chronic L5 radiculopathy, and spondylosis without myelopathy.<sup>2</sup> (Id.) At step three, the ALJ determined that Plaintiff's impairments did not meet or equal any of the impairments in the Listing. (Id.) At step four, he found that Plaintiff had the RFC to perform "less than the full range of light work." (AR 31.) Specifically, Plaintiff could lift, carry, push, or pull 20 pounds occasionally and 10 pounds frequently; sit, stand, or walk six hours in an eight-hour workday; and perform postural activities occasionally. (Id.) Based on the VE's testimony, the ALJ concluded that Plaintiff could perform his past relevant work as a salvage laborer. (AR 36.) Accordingly, the ALJ found Plaintiff not disabled. (Id.)

**V. DISCUSSION**

**The ALJ Properly Found that Plaintiff's Impairments**

**Did Not Meet or Equal Listing 1.04(A)**

Plaintiff contends the ALJ erred in finding that his impairments did not meet or equal Listing 1.04(A). (J. Stip. at

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<sup>2</sup> Radiculopathy is disorder of the spinal nerve roots. See Stedman's Medical Dictionary 1503 (27th ed. 2000). Spondylosis refers generally to degeneration of the vertebrae. See id. at 1678. Myelopathy is disorder of the spinal cord. See id. at 1171.

1 4-8, 11-12.)

2       A. Applicable law

3           At step three of the sequential evaluation process, the ALJ  
 4 must evaluate the claimant's impairments to see if they meet or  
 5 medically equal those in the Listings. See §§ 404.1520(d),  
 6 416.920(d); Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.  
 7 1999). Listed impairments are those that are "so severe that  
 8 they are irrebutably presumed disabling, without any specific  
 9 finding as to the claimant's ability to perform his past relevant  
 10 work or any other jobs." Lester, 81 F.3d at 828.

11          The claimant has the initial burden of proving that an  
 12 impairment meets or equals a listing. See Sullivan v. Zebley,  
 13 493 U.S. 521, 530-31 (1990). "To meet a listed impairment, a  
 14 claimant must establish that he or she meets each characteristic  
 15 of a listed impairment relevant to his or her claim." Tackett,  
 16 180 F.3d at 1099 (emphasis in original). "To equal a listed  
 17 impairment, a claimant must establish symptoms, signs and  
 18 laboratory findings 'at least equal in severity and duration' to  
 19 the characteristics of a relevant listed impairment, or, if a  
 20 claimant's impairment is not listed, then to the listed  
 21 impairment 'most like' the claimant's impairment." Id. (quoting  
 22 § 404.1526) (emphasis in original). Medical equivalence,  
 23 moreover, "must be based on medical findings"; "[a] generalized  
 24 assertion of functional problems is not enough to establish  
 25 disability at step three." Id. at 1100 (citing § 404.1526).

26          An ALJ "must evaluate the relevant evidence before  
 27 concluding that a claimant's impairments do not meet or equal a  
 28 listed impairment." Lewis v. Apfel, 236 F.3d 503, 512 (9th Cir.

1 2001). The ALJ need not, however, "state why a claimant failed  
2 to satisfy every different section of the listing of  
3 impairments." Gonzalez v. Sullivan, 914 F.2d 1197, 1201 (9th  
4 Cir. 1990). The ALJ does not err by discussing the evidence  
5 supporting his conclusion only in other sections of his decision.  
6 See id. at 1200-01 (finding no error when ALJ failed to state or  
7 discuss evidence supporting conclusion that claimant's  
8 impairments did not satisfy Listing but "made a five page,  
9 single-spaced summary of the record"); Lewis, 236 F.3d at 513  
10 (ALJ required "to discuss and evaluate the evidence that supports  
11 his or her conclusion," but no error when ALJ does not "do so  
12 under the heading 'Findings'"). Moreover, the ALJ "is not  
13 required to discuss the combined effects of a claimant's  
14 impairments or compare them to any listing in an equivalency  
15 determination, unless the claimant presents evidence in an effort  
16 to establish equivalence." Burch v. Barnhart, 400 F.3d 676, 683  
17 (9th Cir. 2005).

18 An ALJ's decision that a claimant did not meet a listing  
19 must be upheld if it was supported by "substantial evidence."  
20 See Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th  
21 Cir. 2006). Substantial evidence is "more than a mere scintilla  
22 but less than a preponderance; it is such relevant evidence as a  
23 reasonable mind might accept as adequate to support a  
24 conclusion." Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir.  
25 1997) (per curiam) (citing Andrews v. Shalala, 53 F.3d 1035, 1039  
26 (9th Cir. 1995)). When evidence is susceptible of more than one  
27 rational interpretation, the Court must uphold the ALJ's  
28 conclusion. Id.

1       In order to meet Listing 1.04(A), a claimant must establish  
 2 a spine disorder resulting in compromise of a nerve root or the  
 3 spinal cord, with "[e]vidence of nerve root compression  
 4 characterized by neuro-anatomic distribution of pain, limitation  
 5 of motion of the spine, motor loss (atrophy with associated  
 6 muscle weakness or muscle weakness) accompanied by sensory or  
 7 reflex loss and, if there is involvement of the lower back,  
 8 positive straight-leg raising test (sitting and supine)." 20  
 9 C.F.R. pt. 404, subpt. P, app. 1 § 1.04. Spine disorders that  
 10 may satisfy Listing 1.04 include "herniated nucleus pulposus,  
 11 spinal arachnoiditis, spinal stenosis, osteoarthritis,  
 12 degenerative disc disease, facet arthritis, [and] vertebral  
 13 fracture." Id.

14       B. Analysis

15       The ALJ concluded that although Plaintiff had the severe  
 16 impairments of discogenic low-back pain at L4-L5 and L5-S1 with  
 17 degenerative changes, chronic L5 radiculopathy, and spondylosis  
 18 without myelopathy, they did not meet or equal any of the  
 19 impairments in the Listing, "including those found under 1.04."  
 20 (AR 31.) The ALJ provided a "more detailed discussion to support  
 21 this finding" in step four.<sup>3</sup> (Id.; see AR 31-36.) As discussed

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22  
 23       <sup>3</sup> Plaintiff characterizes the ALJ's "simple two sentence  
 24 conclusion" and analysis in step three as "inadequate." (J.  
 25 Stip. at 8, 12.) The ALJ, however, did not err in providing  
 26 factual support for his conclusion through his six-page  
 27 discussion of the medical evidence in step four. See Gonzalez,  
 28 914 F.2d at 1200-01 (finding no error in failure to discuss why  
 claimant's impairments did not satisfy listing because ALJ's  
 four-page evaluation of evidence was adequate statement of  
 factual foundations). Indeed, here, unlike in Gonzalez, in  
 (continued...)

1 below, substantial evidence supported his conclusion.

2 Nothing in the medical evidence shows that Plaintiff had  
 3 nerve-root compression as required under Listing 1.04(A).  
 4 Plaintiff points to a December 2009 MRI showing disc protrusions  
 5 with annular tears at L4-L5 and L5-S1, asserting that the disc  
 6 protrusions "caused nerve root compression." (J. Stip. at 8; see  
 7 AR 307-08.) But the MRI results indicated only the presence of  
 8 disc protrusions and said nothing about whether the protrusions  
 9 caused nerve-root compression. (See AR 307-08); see Huizar v.  
 10 Astrue, No. CV 11-7246-PLA, 2012 WL 3631526, at \*7 (C.D. Cal.  
 11 Aug. 23, 2012) (finding that claimant did not meet Listing  
 12 1.04(A) when she contended that disc protrusion touched nerve  
 13 root but did not "point to evidence of any disc protrusion that  
 14 has resulted in the compression of a nerve root" (emphasis in  
 15 original)); Corralez v. Astrue, No. CV 10-06272-JEM, 2011 WL  
 16 1812784, at \*6 (C.D. Cal. May 12, 2011) (finding that claimant  
 17 failed to "show evidence of nerve root compression" under Listing  
 18 1.04(A) when MRI "indicated a disc bulge that abutted but did not  
 19 compress the nerve root"). Accordingly, Dr. Albert Simpkins Jr.,  
 20 an orthopedic specialist and agreed medical evaluator who  
 21 examined Plaintiff in June 2010 and reviewed additional medical  
 22 records in August 2011, did not diagnose nerve-root compression.  
 23 (AR 420, 451-52.) Plaintiff also points to a March 2010 EMG,  
 24 which "suggest[ed] probable chronic motor radiculopathy L4-L5

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25  
 26       <sup>3</sup> (...continued)

27 finding that Plaintiff did not meet Listing 1.04(A), the ALJ  
 28 specifically referred to his later discussion of the medical  
 evidence. (AR 31.)

1 Bilaterally." (AR 268.) But radiculopathy refers to any  
2 disorder affecting the spinal nerve roots and does not  
3 necessarily indicate compression of nerve roots. See Stedman's  
4 Medical Dictionary 1503 (27th ed. 2000) ("Disorder of the spinal  
5 nerve roots."); Herniated Disk, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/ency/article/000442.htm> (last updated  
6 Sept. 8, 2014) ("any disease that affects the spinal nerve  
7 roots"). Thus, Plaintiff has not established Listing 1.04(A)'s  
8 first requirement. See Garcia v. Colvin, No. CV 14-5070-PLA,  
9 2015 WL 1467256, at \*5 (C.D. Cal. Mar. 26, 2015) (holding that  
10 claimant did not satisfy Listing 1.04(A) because "irritation of  
11 the lumbar and sacral nerve in the lumbar spine" was not  
12 equivalent to nerve-root compression (emphasis omitted)).

13 Plaintiff also fails to establish all the symptoms of nerve-  
14 root compression required under Listing 1.04(A). For example,  
15 although medical sources noted decreased sensation in Plaintiff's  
16 legs and, on two occasions, atrophy in his right thigh (AR 408,  
17 421), they also assessed normal strength and no significant  
18 changes in reflex (AR 261-62 (Mar. 2010), 514 (Sept. 2010), 507  
19 (Oct. 2010), 503 (Nov. 2010), 500 (Jan. 2011), 496 (Feb. 2011),  
20 489 (Apr. 2011), 485 (May 2011), 481 (July 2011), 478 (Aug.  
21 2011), 475 (Sept. 2011), 471 (Nov. 2011), 467 (Dec. 2011), 523  
22 (same), 572 (Jan. 2012), 575 (Mar. 2012), 578 (Apr. 2012), 581  
23 (June 2012)). On several occasions, Plaintiff was assessed with  
24 intact sensation or no atrophy. (AR 514 (Sept. 2010), 503 (Nov.  
25 2010), 523 (Dec. 2011).) Thus, Plaintiff has not shown motor  
26 loss (with muscle weakness) accompanied by sensory or reflex  
27 loss, as required by Listing 1.04(A). See Limbrick v. Colvin,

1 No. CV 14-9692-PLA, 2015 WL 5554002, at \*5 (C.D. Cal. Sept. 21,  
 2 2015) (finding that claimant did not meet Listing 1.04(A) when he  
 3 presented no evidence of "significant atrophy or muscle weakness"  
 4 and noting that "minimal" motor loss was not equivalent to  
 5 atrophy).

6 Further, although Plaintiff had several positive straight-  
 7 leg raises for his right leg, it is unclear whether they were  
 8 positive in both sitting and supine positions, as the express  
 9 language of Listing 1.04(A) requires. (See, e.g., AR 261-62  
 10 (positive in sitting only), 273 (unspecified), 467 (same), 471  
 11 (same), 475 (same), 478 (same), 481 (same), 485 (same), 489  
 12 (same), 500 (same), 507 (same), 523 (same), 572 (same), 575  
 13 (same)); see Huizar, 2012 WL 3631526, at \*7 (finding that  
 14 claimant who was positive for straight-leg raising in sitting  
 15 position did not meet Listing 1.04(A) because he was not positive  
 16 in supine position). It was the ALJ's prerogative to resolve  
 17 this ambiguity.<sup>4</sup> Andrews, 53 F.3d at 1039; see also Sandqathe,

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19 <sup>4</sup> Plaintiff complains that the ALJ did not "call a medical  
 20 expert" to clarify any ambiguities in the record and "testify as  
 21 to whether or not [Plaintiff] met or equaled the listing." (J.  
 22 Stip. at 12.) But the ALJ was not required to call a medical  
 23 expert. Under SSR 96-6p, when the ALJ determines that a  
 24 claimant's impairments do not equal any in the Listing, he may  
 25 satisfy the duty to receive expert-opinion evidence into the  
 26 record by obtaining the signature of a state medical consultant  
 27 on the appropriate form. Castaneda v. Astrue, 344 F. App'x 396,  
 28 398 (9th Cir. 2009). Here, the ALJ satisfied SSR 96-6p: the  
 state-agency medical experts signed the required Disability  
 Determination and Transmittal forms. (AR 78-81.) Thus, the ALJ  
 had no duty to call a medical expert to testify. See Castaneda,  
 344 F. App'x at 398 (ALJ not required to call medical expert to  
 testify whether claimant's impairment satisfied Listing 1.04 when  
 ALJ's determination was supported by substantial evidence and  
 (continued...))

1 108 F.3d at 980 (reviewing court must uphold ALJ's decision when  
 2 evidence is susceptible of more than one rational  
 3 interpretation). Given that Plaintiff also had several negative  
 4 straight-leg raises for his right leg (AR 329, 332, 353, 419,  
 5 496, 578, 581), he has not shown that he satisfied this  
 6 requirement.

7 In addition, although medical sources consistently assessed  
 8 a limited range of motion for Plaintiff's lumbar spine (see,  
 9 e.g., AR 467, 471, 475, 478, 481, 485, 489, 496, 500, 503, 507,  
 10 514, 523, 572, 575, 578, 581), a physical therapist noted that he  
 11 demonstrated "signs of self limitation during ROM and special  
 12 testing" (AR 330, 332, 353). Thus, Plaintiff fails to satisfy  
 13 this requirement as well, especially given that he does not  
 14 challenge the ALJ's determination that he was "less than fully  
 15 credible" and that the record "strongly suggest[ed]" that he  
 16 "exaggerated symptoms and limitations." (AR 32.) Moreover, as  
 17 already discussed, Plaintiff had normal motor strength, reflexes,  
 18 and some negative straight-leg raises. See Smith v. Colvin, No.  
 19 EDCV 13-2244 AJW, 2015 WL 248281, at \*3 (C.D. Cal. Jan. 20, 2015)  
 20 (finding that claimant did not meet Listing 1.04(A) although she  
 21 had limited range of motion because treating physician  
 22 "consistently found that [she] had full motor strength in the  
 23 bilateral lower extremities, normal reflexes, and negative  
 24 straight-leg raising tests"); see also Zbley, 493 U.S. at 530  
 25 (holding that "[f]or a claimant to show that his impairment

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26  
 27                 <sup>4</sup> (...continued)  
 28 nonexamining state-agency medical experts signed required forms).

1 satisfies a listing, it must meet all of the specified medical  
 2 criteria," and "[a]n impairment that manifests only some of those  
 3 criteria, no matter how severely, does not qualify" (emphasis  
 4 omitted)).

5 For all these reasons, substantial evidence supported the  
 6 ALJ's finding at step three that Plaintiff's impairments did not  
 7 meet or equal any of the impairments in the Listing, including  
 8 1.04(A). See Sandgathe, 108 F.3d at 980; Worth v. Astrue, 330 F.  
 9 App'x 642, 644 (9th Cir. 2009) (affirming ALJ's determination  
 10 that claimant did not satisfy Listing 1.04(A) because "[t]he  
 11 medical record revealed that [claimant] suffered neither nerve  
 12 root compression nor symptoms of compression, such as sensory or  
 13 reflex loss"). Plaintiff is not entitled to remand on this  
 14 ground.

15 **VI. CONCLUSION**

16 Consistent with the foregoing, and under sentence four of 42  
 17 U.S.C. § 405(g),<sup>5</sup> IT IS ORDERED that judgment be entered  
 18 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's  
 19 request for remand, and DISMISSING this action with prejudice.  
 20 IT IS FURTHER ORDERED that the Clerk serve copies of this Order  
 21 and the Judgment on counsel for both parties.

22  
 23 DATED: June 21, 2016  
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**JEAN ROSENBLUTH**

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JEAN ROSENBLUTH  
 U.S. Magistrate Judge

25  
 26 <sup>5</sup> That sentence provides: "The [district] court shall have  
 27 power to enter, upon the pleadings and transcript of the record,  
 28 a judgment affirming, modifying, or reversing the decision of the  
 Commissioner of Social Security, with or without remanding the  
 cause for a rehearing."